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October 11, 2006

Marlene H. Dortch
Federal Communications Commission
The Portals
445 12th St., S.W., TW-A325
Washington, D.C., 20554

Re: CC Docket No. 96-128, Michigan Public Telecommunications
Association, Petition for Declaratory Ruling

Dear Ms. Dortch:

On September 6, 2006, Henry T. Kelly, Joseph E. Donovan, and Julie Musselman of our firm and Gary Pace of the Michigan Public Telecommunications Association met with Wireline Competition Bureau Associate Bureau Chief Donald Stockdale, Acting Assistant Division Chief Pamela Arluk, Acting Pricing Policy Division Chief Albert Lewis, and Staff Attorney Lynne Hewitt Engledow. We discussed generally the Association's positions as reflected in documents previously submitted in this proceeding, and those outlined in the attached document that was handed out in the meeting.

Please direct any questions to Joe Donovan at (312) 857-2347.

Sincerely,



Joseph E. Donovan

JED/cb

Attachment

Michigan Pay Telephone
Association's Second Application for
Declaratory Ruling
FCC Docket No. 96-128

Michigan Pay Telephone Association
September 6, 2006

Outline

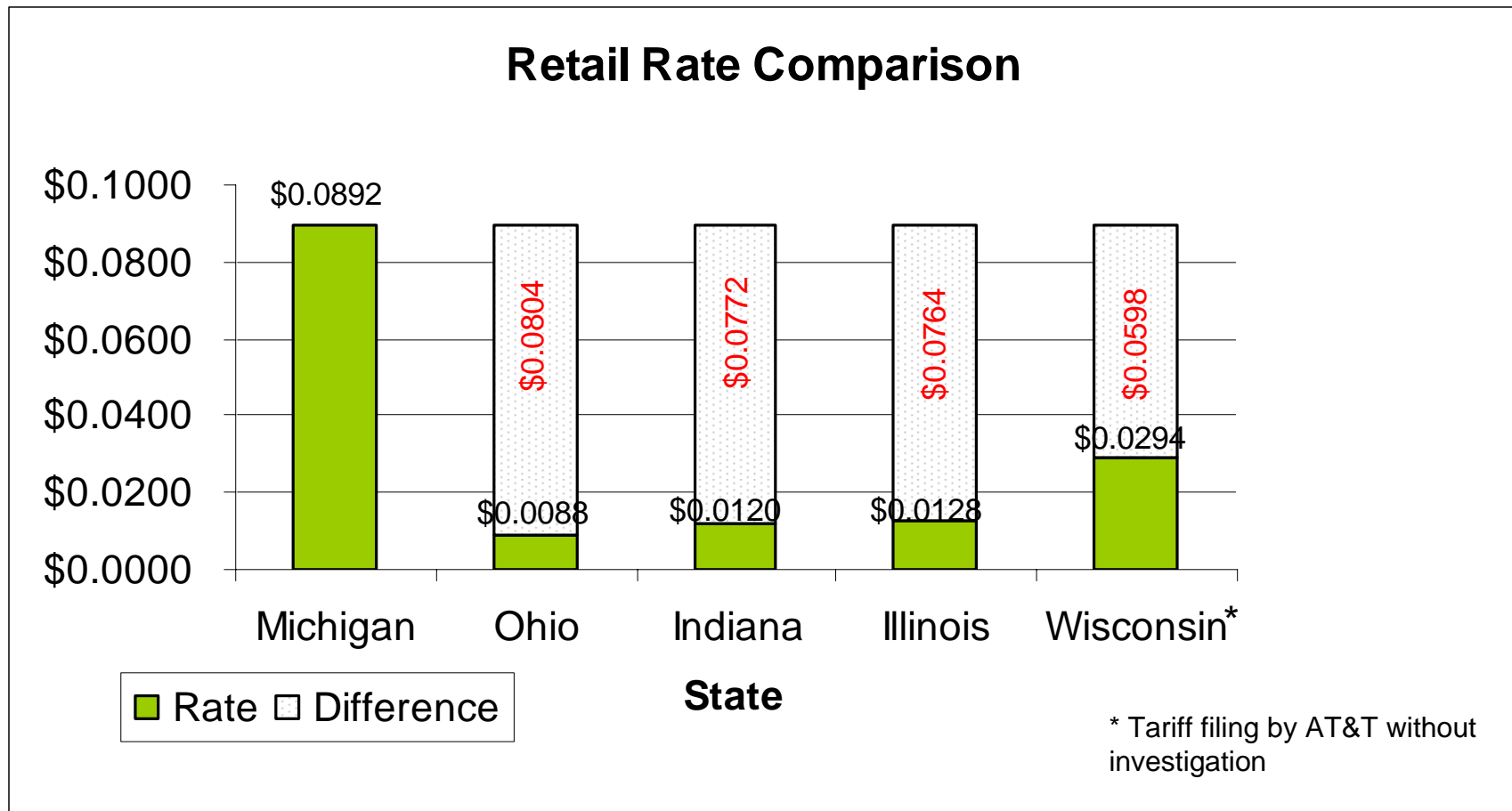
- Errors made by the Michigan PSC
- General Observations
 - MPTA Petition is unique and unrelated to pending refund petitions
 - Full proceeding not necessary
 - Order will assist appeals court
 - What the MPTA is seeking
 - Drastic decline in number of Michigan payphones
 - Comparison of the dramatic variances between usage rates in the former-Ameritech region
- New Services Test discussion and issues
- Review of FCC prior findings

What the Michigan PSC Did Wrong

- For local usage, it ordered a methodology not supported by any party, not even AT&T.
- The Michigan PSC failed to follow the NST guideline methodology for local usage, there is no justification in the record supporting the non-uniform overhead allocation for local usage:
 - ❑ no “comparable” toll usage overhead allocation;
 - ❑ no information as to the toll usage tariff rate being utilized;
 - ❑ no evidence demonstrating how toll usage actually is a “comparable” service.
- The Michigan PSC’s determination results in the continued application of an overhead allocation that is more than **600% over** the direct cost.*

*In April 2006, AT&T increased the local usage rate to PSPs to \$0.11 per message. Subsequent to the filing of the MPTA Petition, AT&T has rescinded that rate increase.

Rate Comparison for Local Usage – Former Ameritech States



MPTA's FCC Application

- Limited solely to the Michigan PSC's improper interpretation and failure to follow the NST re AT&T's local usage service overhead allocation factor

- No issues surrounding:
 - ❑ the underlying cost studies or AT&T's proposed methodology adopted by the Michigan PSC
 - ❑ the effective date of applying the cost-based rates
 - ❑ if refunds are owed for any unlawful overcharges

Full Proceeding is Not Necessary

- AT&T's entire cost study was submitted as an attachment to the MPTA's Application
- No factual disputes
- Michigan PSC has opted not to defend its Order before the Commission

State Appeal Process

- Should not wait for the state appeal process to be finalized
 - Oral arguments are taking place on September 7, 2006
 - Commission has a history of clearly stating proper application of the New Services Test even with appeals pending
 - *Wisconsin Order*
 - Commission's *First Michigan Order* granting the MPTA's first request for declaratory ruling
 - Must issue ruling so Court can benefit from FCC input
 - The Appeals process will not be usurped

Establishing Cost-Based Rates for Local Usage Service

- The MPTA is seeking an Order finding:
 1. that the MPSC fails to properly interpret and follow the Commission's New Services Test with respect to AT&T's local usage overhead allocation service and rate.
 - a. The result of this error is non-cost-based rates for local usage services being assessed to the Michigan IPPs in violation of the *Wisconsin Order*, the New Services Test regulations and Section 276.
 - b. Pursuant to the *Payphone Order* and Section 276(c), the Orders are preempted.
 2. that AT&T must modify its tariffed local usage rates to incorporate the same overhead allocation it proposed and the Michigan PSC adopted for the rest of the AT&T payphone services.

Commission's Historical Application of the NST – Usage Sensitive Services

- *Wisconsin Order*

- Held that “any rate for local usage billed to a payphone line, as well as the monthly payphone line rate, must be cost-based and priced in accordance with the new services test.” ¶ 64.
- **“Providing only a line, without allowing local calls over the line, does not satisfy this requirement.** We required these payphone line services to be priced at cost-based rates in accordance with the new services test.

“This conclusion advances our purpose in requiring cost-based payphone line rates in the first place. **A high usage rate would undermine our and the states’ efforts to set the payphone service rates in accordance with a cost-based standard.**

A non-cost-based usage rate would also constitute an impermissible “end run” around the requirements of section 276.” ¶¶ 64-65

New Services Test Allows for Non-Uniform Overhead Allocations – *if Fully Justified*

- The Commission has held that non-uniform overhead factors can still be cost-based, but only if supported and justified by the record.
- For example, the Commission reiterated that the new services test does “not mandate uniform overhead loading, **provided that the loading methodology as well as any deviation from it is justified.**” *Wisconsin Order*, ¶ 52

Michigan Payphone Case on Remand

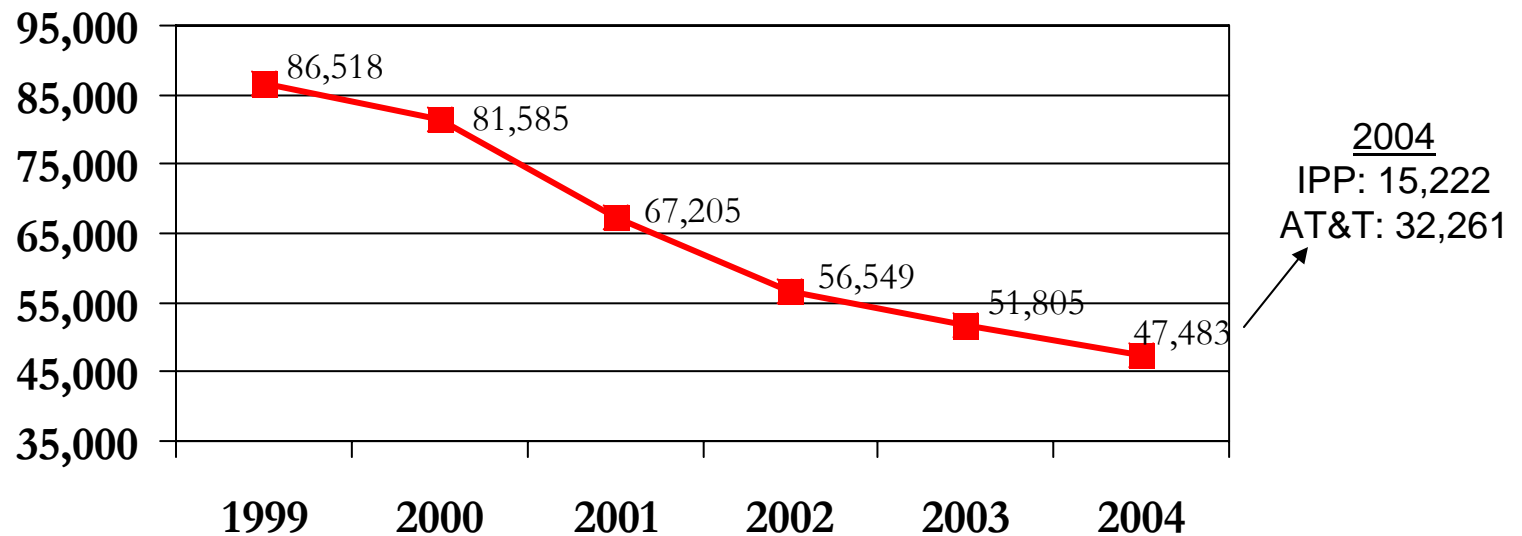
- AT&T attempted to calculate the direct costs and the overhead allocation factor based upon the so-called Comparative Services Test. (AT&T Ex. R-71)
 - This is AT&T's only cost justification for its proposed uniform overhead.
 - AT&T proposed a single uniform overhead allocation for all of its payphone access services, including local usage.
- The Michigan PSC Orders adopt AT&T's proposed costs and overhead allocation methodology for all of AT&T's payphone services with the single exception of local usage.
 - For that service, the Michigan PSC made a unilateral decision that: "toll services are a comparable service to local toll" without applying the comparative services methodology the Commission developed in the *Physical Collocation Order*
 - Approved a tariffed local usage rate which is now \$0.0892 per message.

Without Cost-Based Usage Sensitive Rates the Number of IPP Payphone Lines Will Continue to Fall

- The Commission has already noted the direct correlation between cost-based rates and widespread deployment of payphones.
 - The Commission noted in its *Payphone Order* that implementing its determination to impose the New Services Test will satisfy the mandates of Section 276(b)(1) “to promote the widespread deployment of payphone services to the benefit of the general public.”
 - The Commission’s objective in applying the New Services Test to the RBOC’s payphone services is “to promote competition among payphone service providers and promote the widespread deployment of payphone services to the benefit of the general public.” *Payphone Order* ¶ 313.

Decreasing Number of IPP Payphones in the AT&T Michigan Service Territory

**# Payphones in AT&T
Michigan Territory**



* Source: FCC Trends in Telephony Reports

Effects on IPP Payphone Profitability

- Excessive rates for underlying local usage service negatively impacts profitability of phone lines.
- The AT&T approved, non-cost-based local usage rate can be as much as **68%** of a payphone's monthly bill. (See Tab 4 of the MPTA's Application)
- However, if the cost-based local usage rate* (using the uniform overhead allocation the Michigan PSC adopted for all of AT&T's other payphone services) is applied to the very same bill, usage would account for only **25%** of the bill, and trim more than **\$26.00** off of the monthly bill.

* See, AT&T Ex. R-71